No. 15,218

IN THE

United States Court of Appeals

For the Ninth Circuit

MARION B. FOLSOM, Secretary of the Department of Health, Education, and Welfare,

Appellant,

vs.

GRETTA N. PEARSALL,

Appellee.

On Appeal from the United States District Court for the Northern District of California, Southern Division.

BRIEF FOR THE APPELLEE.

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JURISDICTIONAL STATEMENT.

This appeal arises from an action instituted by the appellee as plaintiff in the District Court for judicial review of a final decision of the appellant's predecessor in office under Section 205(g) of the Social Security Act as amended (42 U.S.C.A. 405(g)), hereinafter designated as the Act. The complaint for review is set forth at pages 4-8 of the transcript of record, hereinafter designated as R.—, and the decision of the appellant's predecessor is set forth at

pages 8-10 of the transcript of the administrative proceedings, which has been stipulated as an exhibit herein (R. 39-40) and is hereinafter designated as Adm. Tr.—. Following the answer to the complaint (R. 9-13), motions for summary judgment were filed by the respective parties (R. 13-17) and heard by the District Court, which later issued a memorandum opinion ordering judgment for the plaintiff (R. 17-26). The defendant moved for reconsideration (R. 27-30), was duly heard, and the District Court issued a supplemental memorandum opinion affirming judgment for the plaintiff (R. 30-33). The opinions of the District Court have since been reported at 138 F. Supp. 939 (1956). Summary judgment was accordingly entered, denying the defendant's motion, granting the plaintiff's motion, reversing the decision of the defendant's predecessor, and remanding the proceedings to the Department of Health, Education, and Welfare, pursuant to the said Section 205(g) of the Act (R. 34-35). A notice of appeal therefrom was timely filed by the defendant (R. 35). Jurisdiction of this Court to hear and determine the appeal is conferred by the aforesaid Section 205(g) of the Act as amended and 28 U.S.C.A. 1291.

QUESTION PRESENTED.

Whether the District Court erred in holding that the present appellee, whose mother's insurance benefits as the unremarried widow of a deceased wage earner had been terminated by her remarriage in ac-

cordance with Section 202(g) of the Act (42 U.S.C.A. 402(g)), was entitled to reinstatement of those benefits upon the annulment of her remarriage on the ground that such was a voidable marriage.

PRINCIPAL STATUTORY PROVISIONS.

Section 202(g) of the Act, supra, provides for mother's insurance benefits in pertinent part as follows:

> "The widow * * * of an individual who died a fully or currently insured individual after 1939, if such widow * * *
>
> (A) has not remarried
>
> * * *
>
> (E) at the time of filing such application has in her care a child of such individual entitled to a child's insurance benefit * * * shall be entitled to a mother's insurance benefit for each month, beginning with the first month after August 1950 in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to a child's insurance benefit, such widow * * * becomes entitled to an old age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, she becomes entitled to a widow's insurance benefit, she remarries, or she dies. * * *"

ABSTRACT OF THE CASE.

The facts of this case, (which have never been disputed), are set forth in full on pages 4 and 5 of the Brief for the Appellant on this appeal.

SUMMARY OF ARGUMENT.

The effect of a decree of annulment of a voidable marriage on the rights of the parties thereto and upon the rights of third parties has caused considerable litigation in the Courts. While it has been said that an annulment decree "relates back" so as to determine that no valid marriage ever existed, the question whether or not the doctrine of "relation back" will be literally applied seems to have varied from case to case, depending on the dictates of sound policy and justice. Thus, children of an annulled California marriage are deemed legitimate, and community property rights of the parties are respected in equity when the marriage was entered into in good faith.

However, in the factual situation on this appeal, where a person receiving benefits under a beneficent statute such as the Act marries, and because of that marriage has those benefits terminated under the terms of the statute or case law, and later that marriage has been annulled as voidable, the fiction of "relation back" has been consistently applied so as to reinstate the beneficiary to her original payments. *Eureka Block Coal Company v. Wells,* 83 Ind. App. 181, 147 N.E. 811 (1925); *Southern Pacific Co. v. Industrial Commissioner, et al.,* 51 Ariz. 1, 91 P. 2d 700

(1939); *Southern Ry. Co. v. Baskette,* 175 Tenn. 253, 133 S.W. 2d 498 (1939); *First National Bank v. North Dakota Workmen's Comp. Bureau,* —— N.D. ——, 68 N.W. 2d 661 (1955); *Mays v. Folsom,* 143 F. Supp. 784 (D. Idaho, 1956).

It is true that where two divorced persons enter into a property settlement agreement which provides that support money to the wife terminates on her remarriage, and the wife does remarry later having her remarriage annulled, the Courts have refused to force the husband to resume paying alimony. But these cases are distinguishable from the present one and the others just cited. No liberal construction can be used in interpreting a property settlement agreement, while statutes similar to the Act must be liberally construed. Even more important is the fact that in the divorce cases, the Courts have rested their decision on the grounds that the first husband has a right to rely on his former wife holding herself out as remarried, and that he should then in safety be able to recommit his assets originally chargeable to support. On the other hand, no such prejudice appears here, for it is plain that no one was led into any shifting of assets by appellee's second "marriage."

Aside from the case law, policy considerations favor appellee here. The purpose of Section 202(g) of the Act is to enable a widowed mother to refrain from seeking gainful employment and thus to remain at home with her child, giving the child the advantages of parental guidance. This purpose was fulfilled by appellant when he granted to appellee "mother's in-

surance benefits'' before her voidable second marriage. The need of appellee and her child are just as great now as before her second marriage ceremony, for appellee cannot receive support money from her second ''husband'' under the California law of annulment. The objectives of the Act can just as well be fulfilled. Appellant should not penalize appellee for the mere act of entering into a marriage into which she was fraudulently induced.

ARGUMENT.

I.

THE DOCTRINE OF AN ANNULMENT ''RELATING BACK'' SO AS TO WIPE OUT A MARRIAGE FROM ITS BEGINNING, WHILE NOT WITHOUT ITS EXCEPTIONS, HAS BEEN CONSISTENTLY APPLIED TO VOIDABLE MARRIAGES WHICH WOULD TERMINATE BENEFITS PAID UNDER BENEFICENT STATUTES SIMILAR TO THE ACT.

The question of the effect of an annulment of a marriage on the rights of the parties thereto, and upon third persons, has often been before the courts of this country and has not been unattended with difficulty. Generally speaking, it has been said that when a California Court annuls a voidable marriage, contracted in California, that the decree of nullity erases the marriage from its outset. *McDonald v. McDonald,* 6 C. 2d 457, 58 P. 2d 163 (1936).

In the *McDonald* case, the California Supreme Court compared a voidable marriage, subject to annulment, with a voidable contract, subject to rescission. Both the marriage and the contract are valid and

binding for all purposes unless suit is begun or notice of rescission is given, but if such action is taken, then the parties thereto are restored to their original status or position. Unlike a divorce, which dissolves an admittedly valid marriage for a cause arising after the marriage, an annulment decree relates back and determines that an element of invalidity existed at the time of the marriage ceremony and, therefore, that *no valid marriage ever existed. McDonald v. McDonald,* 6 C. 2d at 461, 58 P. 2d at 165. Giving effect to this rule it is the law in California that permanent support money cannot be given even to an innocent wife who has had her voidable marriage annulled. *Millar v. Millar,* 175 Cal. 797, 810, 167 P. 394, 399, (1917).

The doctrine of "relation back," embodied in the *McDonald* decision, is not, of course, without its exceptions. It has been stated that it will be applied only when it will conform to the sanctions of sound policy and justice as between the parties thereto, their property rights and the rights of their offspring. *Sefton v. Sefton,* 45 C. 2d 872, 875, 291 P. 2d 439, 441 (1955). Thus, children born not only of a voidable marriage but also of void marriages are deemed legitimate. California Civil Code, Sections 84 and 85. Property acquired by parties to a voidable or void marriage is often treated as community property if the marriage was entered into in good faith. *Sanguinetti v. Sanguinetti,* 9 Cal. 2d 95, 69 P. 2d 845 (1937). Furthermore, it is now the rule that where the parties to a divorce enter into a separation agreement providing for alimony for the wife until she remarries, and

the wife does remarry, later having her remarriage annulled as being voidable, that the obligation of the first husband to pay alimony is not revived. *Sefton v. Sefton,* supra, *Gaines v. Jacobsen,* 308 N.Y. 218, 124 N.E. 2d 290 (1954).

None of the two aforementioned lines of case, however, whether applying the doctrine of an annulment "relating back," or falling within the exception to that rule have dealt with the problem of the present case, which involves the effect of an annulment on the term "remarries" appearing in a statute similar to the Act. The appellant, citing the exception cases, contends that the fiction of "relation back" does not apply, and that when the Act provides that benefits terminate upon a marriage or remarriage, then those benefits terminate once and for all, even if the voidable marriage or remarriage is annulled.

This contention, though, is conspicuously unsupported by any direct case authority. Indeed, when the precise question presented on this appeal has arisen before for decision the courts have consistently rejected the position of appellant, have applied the doctrine of an annulment "relating back," and have reinstated persons in appellee's position to the benefits they were receiving before the marriage in question.

Eureka Block Coal Company v. Wells, 83 Ind. App. 181, 147 N.E. 811 (1925).

Southern Pacific Co. v. Industrial Commissioner, et al., 51 Ariz. 1, 91 P. 2d 700 (1939).

Southern Ry. Co. v. Baskette, 175 Tenn. 253, 133 S.W. 2d 498 (1939).

First National Bank v. North Dakota Workmen's Comp. Bureau, —— N.D. ——, 68 N.W. 2d 661 (1955).

Mays v. Folsom, 143 F. Supp. 784 (D. Idaho 1956).

The first four decisions, just cited, are Workmen's Compensation cases. The last involves a lower Federal Court's interpretation of the Act itself.

In the *Eureka Block Coal Co.* case, the plaintiff had been awarded Workmen's Compensation benefits as the widow of an employee who had been accidentally killed. The widow then remarried, her benefits terminated, and subsequently she procured an annulment on the grounds that her remarriage was voidable for fraud. The Indiana Workmen's Compensation Statute involved read as follows: ". . . the dependency of a widow . . . shall terminate with . . . her marriage subsequent to the death of the employee . . ." In rejecting precisely the same points which appellant contends for here, and reinstating the widow to her benefits the Indiana Court stated:

> "Giving the provision referred to a broad and *liberal* construction, as we must, a marriage within the meaning of the statute is *not* a void or *voidable* marriage which may at once be annulled, but a valid and subsisting marriage." (147 N.E. at 812.) (Italics ours.)

It is plain that the Indiana statute in the *Eureka Block* case and the section of the Act to be construed on this appeal are substantially alike. Certainly, the same liberal construction which the Indiana Court

applied is applicable to the Social Security laws. *United States v. Silk,* 331 U.S. 704 (1947).

Citing the case of *Sanders v. Altmeyer,* 58 F. Supp. 67 (W.D. Tenn. 1944), appellant, at page 19 of his opening brief, seeks to distinguish the *Eureka Block* decision on the grounds that while dependency is the primary consideration under Workmen's Compensation laws, status or relationship is controlling under the Act, and that, therefore, Workmen's Compensation cases have been rejected as guides for interpretation of the Act. This distinction seems spurious at best, but suffice it to say that later Federal decisions enunciating the purpose of the Act have stressed the element of relieving hardship on dependents as that for which the Act was designed. *Ray v. Social Security Board,* 73 F. Supp. 58 (S.D. Alabama, 1947); *Stuart v. Hobby,* 128 F. Supp. 609 (S.D. New York, 1955). The *Sanders* case, cited by appellant, does *not* hold that Workmen's Compensation cases never will be used to help construe the Act, and certainly this should not be so where the facts are so similar, and the purposes of the two sets of statutes so much alike.

The facts and conclusions reached in the cases of *Southern Pacific Co. v. Industrial Commissioner,* supra, and *Southern Ry. Co. v. Baskette,* supra, are practically identical with the *Eureka Block Coal Company* case, although, in the former, the plaintiff lost her suit because the Arizona Court considered her annulment invalid. In both decisions the courts held that a *voidable* remarriage, which has been annulled from the beginning, was not such a remarriage that

it would terminate benefits paid under Workmen's Compensation laws. The *Eureka Block Coal Company* case was cited with approval in both opinions. Except for reiterating that Workmen's Compensation laws stress dependency while relationship is the primary concern under the Act, appellant makes no attempt to distinguish these cases from his own.

The holding in *First National Bank v. North Dakota Workmen's Compensation Bureau,* supra, is particularly important as North Dakota and California have the same annulment statutes. (68 N.W. 2d at 664.) Factually, the situation in that case involved a deceased workman's daughter whose Workmen's Compensation benefits had been terminated by her marriage. She then had her voidable marriage annulled and sued for her back benefits. The Court, therefore, not only had before it the precise question of law presented on this appeal, but also had to consider statutes identical to the California laws involved here. In awarding the plaintiff complete reinstatement of her benefits from the time of her marriage ceremony, the North Dakota Supreme Court, after quoting extensively from *McDonald v. McDonald,* supra, stated as follows:

> "Some exceptions have been made to the rule that as to a voidable marriage a decree of annulment makes the marriage void from its inception. Both the rule and the exceptions are ably discussed in *Callow v. Thomas,* 332 Mass. 550, 78 N.E. 2d 637, 2 ALR 2d 632, (1948). *In most instances these exceptions are concessions to equitable principles which have no application to this case.* We follow

> the rule and hold that the decree of annulment made the marriage void ab initio. Edith Mae Charon is entitled to receive payment from the Workmen's Compensation Bureau as though no marriage ceremony ever took place." (68 N.W. 2d at 665.) (Italics ours.)

Appellant's attempt to avoid the effect of this decision is somewhat puzzling. At pages 19 and 20 of his brief he states that the case is inapplicable because the North Dakota statute specifically recognizes the reinstatement of widow's benefits if her remarriage is annulled, if the action for annulment is filed within six months of the remarriage. Whatever the North Dakota statutory Workmen's Compensation law may be it most certainly was not the grounds for the holding in this case. Such a statute is never mentioned in the opinion of the court, and the decision is based entirely on the *McDonald* case doctrine of an annulment relating back so as to wipe out a marriage. The court held that the daughter was entitled to reinstatement of her benefits from the time of her *marriage ceremony,* thus even going much further than what plaintiff asks here, which is reinstatement from the date of her annulment.

Mays v. Folsom, supra, is the last case cited above dealing with facts similar to those on this appeal, and it is directly in point here. Section 202(d) of the Act (42 U.S.C.A. 402(d)) provides for "child's insurance benefits," and, like Section 202(g) of the Act (42 U.S.C.A. 402(g)), which is to be construed here, provides that such insurance benefits shall end upon the

marriage of the person receiving them. In the *Mays* case the child involved was receiving benefits under Section 202(d) when she married and payments to her were terminated. She then had her marriage annulled on the grounds that as a minor the consent of her parents was not obtained and, therefore, the marriage was voidable. Upon appellee's refusal, as here, to resume payments the Federal District Court in Idaho reinstated the child's benefits as of the time of the annulment decree.

If the *Mays* case had been an appellate court decision, it might well have been conclusive here. It is not, however, and admittedly, the opinion is based on the lower court decision in *Pearsall v. Folsom,* 138 F. Supp. 939 (N.D. California, 1956), which is before this court on this appeal. It is significant, however, that another Federal Judge has also rejected the same arguments advanced by appellant in his brief here, and followed the decision of the lower court in this case as "very well reasoned." (143 F. Supp. at 786.)

Appellant strongly contends that in construing a Federal statute, a Federal Court is not bound by State Court interpretations, such as those cited by appellee. This is, of course, true, but when the only decisions, state or Federal, cited by *either* party, which interpret statutes similar to the one in question here, all favor appellee, that fact at least should be highly persuasive.

II.

THE COURT BELOW WAS CORRECT IN DISTINGUISHING THE DECISION OF HAHN v. GRAY AND REJECTING CASES CONSTRUING DIVORCE PROPERTY SETTLEMENTS.

The two decisions cited by appellant most nearly analogous to the factual situation presented here are the cases of *Hahn v. Gray,* 203 F. 2d 625 (C.A.D.C. 1953) and *Sefton v. Sefton,* supra.

In the *Hahn* case the plaintiff therein had been receiving a pension as the unremarried widow of a veteran. When she remarried the pension was discontinued pursuant to regulations of the Veterans' Administration. A New York court annulled the second marriage on the ground that it was voidable for fraud, and she then applied for restoration of the pension. The Administrator of Veterans' Affairs denied the application and was affirmed by the Court of Appeals for the District of Columbia.

The factual situation of the *Hahn* case is somewhat similar to the present one, but the opinion of the Court therein clearly shows that the law of that case is clearly inapplicable to this one. The *Hahn* decision is based entirely on a jurisdictional ground, and the language dealing with the annulment problem is patently dicta. However, even assuming that such language represents a decision by the Court, the wording of the dicta differentiates itself from the facts herein and actually lends itself more to the support of appellee. The Court expressly states that the annulment in the *Hahn* case was *not* an annulment *ab initio,* (as

were the annulments in this case (Adm. Tr. 30-31), the case of *Mays v. Folsom,* supra, and the Workmen's Compensation decisions heretofore cited as authority for appellee). The Court observed:

> "Under the New York Law, some marriages, such as those involving incest or bigamy are void *ab initio,* but others, including marriages induced by fraud, are merely voidable, and are valid for all purposes until judicially declared void. (Citations.)
>
> So in this case. The decree annulling Mrs. Hahn's second marriage, by its very terms, merely dissolved the marriage, *"heretofore existing"* between the parties; it did *not* purport to render the marriage *void from its very inception.* Moreover, that decree did not become effective until three months *after* it was handed down. The only possible conclusion is that Mrs. Hahn was legally remarried for some period of time; namely, from the date of the ceremony until three months after the entry of the annulment decree. Under the circumstances, appellant was no longer the unremarried widow of a veteran and was properly denied restoration to the pension rolls." (203 F. 2d at 626.) (Italics ours.)

It would seem clear that what the Court meant by the above language is that a void marriage is no marriage at all; that a voidable marriage is valid for all purposes "until judicially declared void"; that since the decree of annulment only purported to annul the voidable marriage as of three months *after* the date of the annulment decree, then there must still be a

period of time of the voidable marriage that had not been annulled and therefore was still valid for all purposes. This, plaintiff does not dispute.

It is true that a New York annulment of a voidable marriage such as that involved in the *Hahn* decision, is normally said to be *ab initio. In Re Moncrief's Will,* 235 N.Y. 390, 139 N.E. 550 (1923). However, it is apparent that Mrs. Hahn's decree must not have been such an annulment, or else the elaborate explanation in the *Hahn* opinion that the decree did not become effective until three months after it was handed down would be completely inapplicable. As it stands, appellee contends that the *Hahn* dicta supports her position.

The second decision cited by appellant most nearly analogous to the present facts is the case of *Sefton v. Sefton,* supra. In that case the California Supreme Court held that the annulment of a divorced wife's voidable remarriage would not reinstate the wife to support money she had formerly received under a property settlement agreement with her first husband. The voidable remarriage, even when declared null and void, was held a remarriage within the meaning of the property settlement agreement which provided that the wife's alimony should continue "until her death or remarriage."

There are two major distinguishing features of the *Sefton* decision from the present case, and both of these were rightly recognized by the Court below in its memorandum opinion. (R. 31 and 138 F. Supp. at 944.)

The first difference between the two cases is that the *Sefton* case involved the construction of the word "remarries" as used in a *property settlement agreement,* while this action turns on the meaning of the same word as set forth in a beneficent *statute.* The *Sefton* property settlement could not be the subject of any liberal construction. Section 202(g) of the Act which is involved here, however, must be liberally construed to effect its purpose. *United States v. Silk,* supra. That purpose is to relieve a widowed mother of a child from financial stress so that, if necessary, she might forego gainful employment in order that she might devote sufficient time to the welfare of the child. *Newsom v. Social Security Board,* 70 F. Supp. 962 (E. D. Michigan, 1947). That was the need of appellee equally both before and after her second marriage, but despite the liberal construction applied to the Act, appellant seeks to penalize appellee for an innocent mistake. He should not be allowed to do so.

The second distinguishing feature of the *Sefton* case from the one here is by far the more important. It is based on the entire reasoning of the California Supreme Court in the *Sefton* opinion. The Court stated that Mrs. Sefton by the celebration of a marriage held herself out as having been remarried and that "the defendant was entitled to rely upon her apparent material status after the ceremony . . . He was then entitled to recommit his assets previously chargeable to alimony to other purposes." (45 C. 2d at 876-877, 291 P. 2d at 441-442.) After recognizing the fact that whether or not the doctrine of "relation

back'' of an annulment is strictly applied usually depends on policy considerations, the Court concluded that the resultant prejudice to Mr. Sefton, the first husband, was substantial enough so that the doctrine should not be applied.

In this case, however, no person could possibly be prejudiced or misled into recommitting any assets. Appellee's first husband, who in this case is analogous to Mr. Sefton, is dead, and appellee's Social Security benefits were instituted *not* because of any divorce, but because of that death. The payments which appellee's first husband paid into the Federal Old Age and Survivor's Insurance Trust Fund were completed upon his death and in no way can be increased, even as to his estate.

It can also certainly be said that no person connected with appellant was prejudiced by appellee's ''remarriage'' in the manner envisioned by the California Supreme Court in the *Sefton* case. Surely, neither appellant, nor any other employee of the Department of Health, Education, and Welfare, nor even the Trustees of the Federal Old Age and Survivor's Insurance Trust Fund themselves were deceived into recommitting any of their assets by appellee's second marriage ceremony. To so maintain would be ludicrous. Appellant stood ready under the Act to pay appellee the benefits she was entitled to as the mother of her first husband's child. Whatever funds were available for dispersal before appellee's attempted ''remarriage'' are still available. Appellant should not be permitted to terminate appellee's payments because of an

innocent act made by appellee through the fraudulent inducement of another.

III.

THE TERM "REMARRIES" IN SECTION 202(g) OF THE ACT IS NOT A TERMINATION EVENT IF THE REMARRIAGE IS ANNULED BY PROPER PROCEEDINGS INSTITUTED IN A STATE COURT.

One of the main arguments raised by appellant in his opening brief is that the term "remarries," appearing in Section 202(g) as denoting a happening upon which benefits paid under the Act cease, appears only in a section providing for the ending of "mother's insurance benefits." Appellant then contrasts Section 202(g) with other sections of the Act providing only for temporary deductions upon the occurrence of certain events. If Congress had intended an annulment of a remarriage to reinstate Social Security payments, reasons appellant, it would have been a simple matter to do so.

To meet this contention it is necessary to analyze the other events besides remarriage listed in Section 202(g) of the Act which are declared to terminate "mother's insurance benefits." If the mother reaches the age of 65, or dies, or her child reaches 18, or dies, the mother's payments are ended. Each of these happenings involves either the attainment of a certain age or the death of an individual, and it is obvious that, once they have occurred, that event cannot be undone by any power. It was logical, therefore, for Congress

to place them in a section terminating benefits absolutely.

On the other hand "marriage" is defined by Section 55 of the California Civil Code as follows:

> "Marriage is a personal relation arising out of a *civil contract,* to which the consent of the parties capable of making that contract is necessary . . ." (Italics ours.)

The California statutory definition of marriage as a civil contract is the rule generally in other states. 55 C. J. S. Marriage, Section 1b. The chief difference between the marriage contract and ordinary contracts is that the marriage contract cannot be revoked or dissolved by the parties, but only by the sovereign power of the state. 55 C. J. S. *ibid.* The important fact here, therefore, is that a marriage or remarriage, *can* be undone or annulled, and in that way differs from the other terminating events of death and attainment of a certain age group listed in Section 202(g). It was logical, however, for Congress to place a remarriage in the same section of the Act as other absolutely terminating events, for the vast majority of marriages are final in the sense that only a minute fraction are ended by annulment.

Appellant's contention that he is supported by the failure of Congress to specifically declare that an annulment of a remarriage reinstates benefits paid under the Act also should not be a bar to such action here. Federal and state statutes are constantly being interpreted by the courts in order to ascertain the intent of a legislative body, or what policy considerations dic-

tate, in the myriad of situations impossible to anticipate when a general rule is drafted. It could just as easily be said that if Congress had wished to follow the position of appellant here, it would have expressly declared that an annulment of a voidable marriage did not reinstate Social Security payments. It seems clear that the annulment situation was not contemplated by Congress, any more than it was foreseen by the legislatures of Indiana, Arizona, Tennessee and North Dakota, where the Workmen's Compensation cases cited above as authority by appellee arose. Yet a liberal construction of those state Workmen's Compensation Statutes guided the state courts to the conclusion argued for by appellee here.

IV.

THE ANNULMENT OF APPELLEE'S REMARRIAGE SHOULD BE CONCLUSIVE AS TO APPELLANT, AND DOES NOT MATERIALLY PREJUDICE THE RIGHT OF ANY OTHER THIRD PARTIES.

Citing Section 86 of the California Civil Code, and the California cases of *Price v. Price,* 24 C.A. 2d 462, 75 P. 2d 655, (1938), and *Sefton v. Sefton,* supra, appellant strongly maintains that they are authority for the proposition that the doctrine of "relation back" *never* will be applied to third parties such as appellant in such a way as to affect any of their rights. (See appellant's opening brief, pages 23-27). The *Price* case dealt with the effect of a California annulment of a wife's remarriage upon a property settle-

ment agreement executed between the wife and her first husband, which provided that the first husband's obligations to support his wife ended with her remarriage. With the exception that the remarriage involved in the *Price* case was contracted in Mexico, there is no substantial difference between the fact of the *Price* and *Sefton* cases. The District Court of Appeal held in the *Price* decision that the remarriage of the wife terminated any obligations of the first husband under the property settlement agreement. The Court was undoubtedly influenced by the fact that the annulment was granted on grounds not authorized by California law, but it also based its holding on Section 86 of the Civil Code which reads as follows:

> "A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them."

It should immediately be made clear that neither the *Price* or *Sefton* cases, nor Section 86 of the California Civil Code are authority for what appellant says they are. They do *not* state that the doctrine of "relation back" of an annulment *never* will be applied to third parties. They do hold, of course, that as to third parties a decree of annulment is *not always* conclusive, but the best that can be gleaned from them in support of appellant's position is that the courts will be wary before applying the doctrine to those not parties to the annulment action. This is acknowledged by the California Supreme Court which construed both the *Price* case and Section 86 in its *Sefton* opinion and stated:

> "Therefore, whatever may be said for the fiction of 'relation back' as a general principle in annulment cases, *it must be deemed to apply only where it promotes the purposes for which it was intended.*" (45 C. 2d at 876, 291 P. 2d at 441.) (Italics ours.)

Those purposes, as enunciated by the same decision are to effect a result which conforms to the sanctions of sound policy and justice, and appellee submits that hers is such a case. Appellee and her child have lost the support of appellee's first husband through his death. Appellee also cannot receive any support from her second "husband," because her second "marriage" was voidable and annulled. *Millar v. Millar,* supra. The needs of appellee and her child are just as great now as before appellee's second marriage ceremony, and yet appellant, as a penalty for an innocent action, seeks to take away from her benefits designed for the welfare of herself and her child in just such a situation. *Newsom v. Social Security Board,* supra. This is clearly inconsistent even with the reasoning of the *Sefton* decision.

It also is interesting to note that the contention of appellant that he cannot be bound by appellee's annulment is rejected by one of appellant's own authorities. In *Hahn v. Gray,* supra, the Court (203 F. 2d at 626) expressly disagrees with this view. If that part of the *Hahn* opinion dealing with the annulment problem represents the decision of the Court, and is not dicta, as is contended by appellant, then there is substantial Federal appellate authority against him on that point.

In any event, the Courts have consistently ruled that an annulment *ab initio* of a voidable marriage is conclusive as to a third party in appellant's position when construing the Act, or a statute similar in purpose. *Eureka Block Coal Company v. Wells,* supra; *Southern Pacific Co. v. Industrial Commissioner,* supra; *Southern Ry. Co. v. Baskette,* supra; *First National Bank v. North Dakota Workmen's Comp. Bureau,* supra; *Mays v. Folsom,* supra. In the *Eureka Block* case the reasoning was that an annulment was in a sense an *in rem* judgment, binding on all persons whether or not they were parties to it. In the *First National Bank* case, the Court frankly stated in the quotation set forth in Section I of this brief that it applied the doctrine of "relation back," on policy grounds. Whatever the reason, the cases have uniformly supported the position of appellee.

In an effort to obviate the effect of these decisions, and the dicta of the *Hahn* case, appellant states in his opening brief at pages 29-31 that other parties besides himself may be hurt if the decision of the Court below is affirmed. He points out that the Act provides a ceiling on the amount of benefits payable on account of any one wage earner. He then envisions the following situation which might come to pass if appellee's contentions here are allowed: A widowed mother is receiving "mother's insurance benefits" under Section 202(g) of the Act, and her several children are receiving "child's insurance benefits" under Section 202(d). The mother remarries. Her benefits are terminated, and the benefits of her children under Sec-

tion 202(d) are correspondingly increased. The mother then has her voidable remarriage annulled, and because the mother is reinstated to her benefits and there is a maximum amount payable on account of one wage earner, the benefits to the children are thus reduced. Appellant concludes, therefore, that the children as innocent third parties have been prejudiced.

The answer to this argument is that after the mother is reinstated the children's benefits are reduced *only* down to the amount they were receiving before their mother's remarriage—an amount which Congress deems adequate for children in their position at the time their mother is first widowed, and which certainly should remain adequate when all the parties, the mother and her children, are restored to the situation as it was before the mother's remarriage.

It must be noted here that appellant's solicitude for the rights of children does not extend to the situation where a minor, whose "child's insurance benefits" under Section 202(d) of the Act are terminated because of the child's marriage, has that voidable marriage annulled on the grounds of his or her minority. State laws uniformly and humanely protect children from the mistakes of a too youthful marriage, but appellant would not have this protection applied by the Federal Government. He would cut them off from Social Security benefits completely. *Mays v. Folsom,* supra. The decision by the Court on this appeal may well have conclusive bearing on such a situation in addition to the one here.

V.

POLICY CONSIDERATIONS AND LIBERAL CONSTRUCTION OF THE ACT REQUIRE THAT PLAINTIFF'S BENEFITS BE REINSTATED AND THE DECISIONS OF THE COURT BELOW BE AFFIRMED.

Any discussion of the effect of policy considerations on this appeal should begin with the statement that this is a case of first impression in the Federal Appellate Courts. Appellant concedes this at pages 9 and 32 of his opening brief, and appellee agrees with that statement. The decision of the Court here will, therefore, not only determine the effect of a widowed mother's annulment on the terminating event of remarriage under Section 202(g) of the Act. As said before, it may well be a conclusive precedent under Sections 202(d), (e), (f), and (h) of the Act, involving children, widows, widowers and parents, respectively, to say nothing of other Federal statutes, such as the Veteran's Act in *Hahn v. Gray,* supra. All of the above cited sections provide for benefits which end upon the marriage of the beneficiaries.

Appellant contends at pages 31 and 32 of his brief that the Court below misapplied the principle of liberal construction of welfare legislation, and in so doing disregarded the plain and unambiguous wording of the Act, namely that a mother's benefits end on her remarriage. This same plain and unambiguous statutory language has confronted the Courts before, and as has already been stated, they have consistently ruled that an annulled marriage is not such a marriage as to terminate benefits. (See the Workmen's Compensation cases previously cited herein, and par-

ticularly *Eureka Block Coal Co. v. Wells,* supra, and *Mays v. Folsom,* supra.) Admittedly, there is no ambiguity in the statement that a mother's remarriage ends her Social Security payments. The very question here, though, is whether appellee's second marriage was such a marriage within the meaning and intent of the Act. In this regard it is significant to note the opinion of the New York Court of Appeals in *Gaines v. Jacobsen,* supra, a case cited as authority by appellant with the facts identical to those of *Sefton v. Sefton,* supra. Despite the fact that they were construing the unambiguous word "remarry," not in a statute, but in a property settlement agreement, when no liberal construction was involved, and despite the fact that New York law, unlike California, allows permanent support payments to be awarded a wife seeking an annulment, the Court conceded that "resolution of the dispute may not be easy." (124 N.E. 2d at 293).

What appellant seeks here is to declare that the mere marriage ceremony in and of itself, even with an insane, impotent, or defrauding spouse is enough to end Social Security payments, no matter how innocently the marriage is entered into. Even a completely coerced marriage ceremony would end benefits, or a marriage when the parties were too young by law to understand their marital obligations. It is submitted that appellant's position does far more violence to the spirit and plain meaning of the Act than anything for which appellee contends.

Throughout this brief, many of the other policy considerations applicable to the problem before the

Court on this appeal have been discussed, particularly in those sections dealing with the rebuttal of appellant's main arguments. It would serve no purpose to extensively review these considerations here, but a brief summary of them may be in order.

The purpose of "mother's insurance benefits" provided for in Section 202(g) of the Act (formerly Section 202(e)) is to enable the widow of a deceased wage earner, who is also the mother of the wage earner's child, to remain at home and care for the child, or at least to assume parental responsibility for the welfare and care of the child if she and the child do not live in the same house. These benefits are designed to relieve the mother of financial stress so that she may give to her child a mother's watchful attention and not be forced to seek employment away from home. *Newsom v. Social Security Board,* supra, (70 F. Supp. at 964-965).

The above situation is precisely what appellee and her child found themselves in from October, 1952, to June, 1954, and to carry out the purpose of the Act appellant awarded appellee "mother's insurance benefits" under Section 202(g). Two years after they began, these benefits were terminated, as all parties concerned believed that appellee through her second "marriage" had acquired other means of support to enable her to care for her daughter. The intolerable nature of this second "marriage" into which appellee had entered is recognized by Section 82 of the California Civil Code, and, accordingly, appellee sought and received an annulment of it. She could not re-

ceive permanent support money from her second "husband" under the California law of annulment. *Millar v. Millar,* supra.

Thus, appellee and her child were placed in the same situation they had formerly been in, with their need just as great as when appellant had awarded her benefits before her second marriage ceremony, and the purposes of the Act just as well to be served through aid given them.

It can not be said that any single individual was misled to his or her financial prejudice by appellee's second ceremony of marriage in the sense that funds were recommitted elsewhere which cannot without sacrifice be withdrawn to pay appellee. Appellee's first husband is dead, and should she be reinstated to her "mother's insurance benefits" the burden of paying these benefits would fall on the Federal Old Age and Survivor's Insurance Trust Funds.

Whatever funds were available to appellant before appellee's remarriage are still available to him. Even if many other beneficiaries are reinstated as a result of the precedent of this decision appellant will be forced to pay only what funds were already committed to these people before they entered into a marriage marred by some element of invalidity. It cannot be said that the Federal Old Age and Survivor's Insurance Trust Fund, which is financed by taxes, is in any way comparable to a divorced private individual who might be severely prejudiced if he were not able to rely on his wife's remarriage to finally terminate his support obligations.

If appellee's second marriage had ended in a divorce, or in death, she would not dispute the fact that her "mother's insurance benefits" could not then be revived. She would then have had the right to seek support from her second husband or his estate. However, appellee's second "marriage" did not so end, and as the innocent party to an invalid marriage she exercised her right to have it annulled. Because of such a decree the right to support does not exist.

It is true, that if the lower Court is affirmed here, the problem will arise as to what to do in a state such as New York where alimony is allowed in an annulment action. While that question is not directly before the Court in this case, it is suggested that whether or not the beneficiary in New York is reinstated should be made to depend on whether she elects to receive support from her second husband.

Appellee submits that the lower Court in reaching its decision in this case, (138 F. Supp. 939), was guided not only by the law as it has consistently been applied in such a situation, but by sound considerations of policy.

CONCLUSION.

For all of the foregoing reasons it is submitted that the District Court was correct in holding that the appellee was entitled to reinstatement of mother's insurance benefits upon the annulment of her remarriage on the ground that it was a voidable marriage.

The judgment of the District Court should, therefore, be affirmed by this Court.

Dated, San Jose, California,
February 8, 1957.

Respectfully,
CHALMERS SMITH,
Attorney for Appellee.